

P U B L I C H E A R I N G
before
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION
on
DEREGULATION OF THE ALCOHOLIC BEVERAGE INDUSTRY

Held:
January 29, 1980
Room 224
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Eugene J. Bedell, Chairman
Senator Walter E. Foran, Vice-Chairman
Assemblyman Walter M. D. Kern, Jr.
Fred Mahalik, representing Assemblyman Thomas F. Cowan, Sr.
Dennis P. O'Keefe
Peter Vanola
Warren Jones
Milton H. Cooper
Nicholas Lordo

ALSO:

William E. Halsey, Research Assistant
Office of Legislative Services
Aide, Alcoholic Beverage Control Study Commission

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Just to repeat one of the things that I mentioned, and that is, if for any reason the consumer resale price is struck down, presumably, there will be a transition period resulting in no loss of revenue. Then, the Legislature will then be obliged to consider a revision of the current law. As you know, we are the agency which administers the sales tax, as well as the excise tax and our concern with the enforcement of the law, as determined by the Legislature and as also determined by the courts. Not knowing the scope of the Committee's inquiry this morning, I merely gave you some of the background in order to set the stage for any questions which the Committee deems appropriate and which is within the scope of my administrative responsibility.

SENATOR EUGENE BEDELL (CHAIRMAN): Thank you Sid. I would like the record to show that Chairman Bedell is now in the Chair. Sid, one of the questions that crosses my mind is the fact that the current method in which revenues are derived, taxation of alcoholic beverages, is rather a simplistic system. Is it not administratively?

MR. GLASER: It is because we are collecting the tax from a limited number of taxpayers, as distinguished from what the law was before where we were collecting it from, presumably, 20,000 or so retailers. But, actually, an administration like this really doesn't bother us because we handle 3.2 million income tax returns. We handle probably 180,000 corporation returns. We have a million and a half, approximately, homestead rebate returns, so that whether it is at the retail level or wholesale level really doesn't phase us too much because we're accustomed to handling matters on a large basis. But, the specific answer to your inquiry is that, yes, it is easier to collect from a limited number just as we do in the case of the motor fuels tax, which is an excise tax. We collect the tax from a limited number of distributors and that's it. We don't have to go to the individual motor fuels retailer in order to collect the tax.

SENATOR BEDELL: I'm not trying to cast any aspersions on your department or your ability, but I'm talking more from the standpoint of manpower. Of course, you do many of these functions, at the present time, as you said, with the income tax and sales tax, but if we were to go, let's say, to taxation at the retail level, wouldn't that entail the need for additional people in your department?

MR. GLASER: It may. We had to do a great deal of individual auditing at the retail level, because we found numerous discrepancies between inventory and sales and there were quite a number of deficiency assessments.

SENATOR BEDELL: Again, calling upon your vast experience, would it be safe to say that the present system would not involve the area of possible fraud or well meaning mistakes as opposed to the present system going to the retail level?

MR. GLASER: Well, it could involve fraud at any level depending upon the individual company except that there would be a lesser number of taxpayers to check up on.

SENATOR BEDELL: Senator Foran?

SENATOR FORAN: Sid, could you outline for me and for my own edification the closeness or the working arrangements you have with ABC inspectors and ABC personnel as related within your department?

MR. GLASER: Well, as far as ABC is concerned, we advise them of any licensees who are indebted to us for one reason or another. It doesn't necessarily pertain to the alcoholic beverage tax, but it could be any tax. For example, if we obtain a judgement against a beverage tax corporation, which happens to be a retail licensee, we'll advise Alcoholic Beverage and they'll exert a certain amount of power to get them to pay up. Otherwise, they may withhold the license.

SENATOR FORAN: Do you have a liason with the ABC?

MR. GLASER: Oh, yes.

SENATOR FORAN: How many people are involved in that?

MR. GLASER: Well, it would be our enforcement people more than anything else.

SENATOR FORAN: How many of those do you have?

MR. GLASER: Well, we have a considerable number, but we have an assistant director in charge of enforcement. We're developing even better liason with the Alcoholic Beverage Commission.

SENATOR FORAN: Thank you.

SENATOR BEDELL: Mr. Cooper.

MR. COOPER: In figuring the amount of money that would come to the State by any of the three methods, consumer level, wholesale price or an increase in the excise tax, does that figure which you use, which you say will give about the same \$55 million or \$60 million annually, reflect the actual cost for collecting the sales tax?

MR. GLASER: No.

MR. COOPER: It would cost money to collect the sales tax under any one of those three systems, wouldn't it?

MR. GLASER: It might cost a little more, but let me say this. A good many of the retail licensees, and incidentally, I'm not necessarily advocating one system over another--I think we should be clear on that--I'm merely pointing out that these are options which the Legislature has. But, I would assume that a good many of these retail licensees presently are paying sales tax because they are selling items which are subject to the sales tax. For example, sodas, soft drinks are all subject to the sales tax. So, presumably, many of them are on file and many of them are on our regular list so that it would entail some additional people. It changes the emphasis on the incidence of the tax and we would then have to do auditing at the retail level of the sale of beverages, which we do not do now.

MR. COOPER: Under the present system, I'm assuming then that the State is very well satisfied on the collection of alcoholic beverage sales tax.

MR. GLASER: We have made no recommendation with respect to any changes.

MR. COOPER: But, from your experience--you were there in '72--and since you've been Director of Taxation, what is the experience in the collection of the taxes, under the present system.

MR. GLASER: We feel that enforcement and the collection of the taxes is very good.

MR. COOPER: And it costs the State practically nothing to collect that tax?

MR. GLASER: Well, I wouldn't say it costs practically nothing.

MR. COOPER: Well, tell me how much it costs then.

MR. GLASER: I don't know exactly, but let me say this. The collection of all of our taxes is probably less than 1% of revenue and it does entail a certain amount of expenditures in order to print returns, to send out return forms, in order to review what comes in and to do the collection and to do whatever auditing appears necessary, but I would think that the cost would not be great.

MR. COOPER: I wish you could be a little more specific on the basis of the relationship comparing collection of the taxes and the cost of collection of the taxes today and as it was in 1972, prior to the amendment to the sales tax act, when the retailer was paying the tax directly.

MR. GLASER: Well, are you talking about only concerning that part of the sales tax dealing with the sale of alcoholic beverages?

MR. COOPER: Oh, yes.

MR. GLASER: Well, I would say that prior to 1972 the cost must have been greater because we were doing auditing of individual retail licensees.

MR. COOPER: As a matter of fact, if you know the answer, wasn't it as a result of investigations made by the Division of Taxation involving certain people, retailers, who did not pay the tax, at least involved in investigations to determine whether or not they were paying the tax and that it was as a result of the difficulty involved in that type of investigation that the suggestion was then made to have the sales tax act amended as it now exists?

MR. GLASER: It is my recollection, Mr. Cooper, that the suggestion did not emanate from our Division.

MR. COOPER: From whom did it emanate?

MR. GLASER: I would think, according to my understanding, I'm not certain but it would seem to me that it did emanate from, possibly, the then Alcoholic Beverage Tax Director or possibly some of the people in the Administration at that time.

MR. COOPER: Do you recall my appearing in your office several times in opposition to that plan?

MR. GLASER: I don't recall Mr. Cooper, but I know that we opposed it also.

MR. COOPER: How many people in the Division of Taxation, at this time, are involved in the actual collection of sales tax emanating from alcoholic beverages?

MR. GLASER: I can't say that, Mr. Cooper. I'll tell you why. That is because since 1970 the Division of Taxation was operating on a functional basis, which means that we did not break down the taxes, we did not break down the enforcement or the administration by the specific tax administered, but that all of our people, in a sense, are engaged in all of our taxes. For example, when an auditor goes out to audit, he not only audits the sales tax, but he'll also audit the corporation taxes, if necessary, and the business-personal property, if necessary and any other tax which the taxpayer may be subject to. For example, at one time when we had the retail gross receipts tax and the unincorporated business tax, those taxes were similarly audited at that time. It is the same way with enforcement. When our people go out to enforce a judgement, for example, there may be several judgements. One might be on corporation tax, one may be on motor fuels and whatever it is, that's what they do. So, I really can't give you a specific example as to how many people are really engaged in sales tax and what the expenditure is. We probably might be able to come up with a figure, if you so desire, but it would take a little study in order to do that, because we don't keep the records on that basis any longer.

MR. COOPER: This Commission is concerned with alcoholic beverages, the laws and regulations, not everything else. If I suggested to you that it would cost 50% of what you would collect under a changed system, a change from what we have today, under your #1 and a tax at the consumer level on bottled goods and drinks, would you think that is a high figure?

MR. GLASER: I really couldn't say, but I would think that you would be in the ballpark. It would cost us considerably more.

MR. COOPER: It would cost \$30 million, half of what you collect.

MR. GLASER: Cost us? No, no. When you say 50% of what we collect, oh, no, that's not what I understood your question to be. I thought your question was whether it would cost 50% more than what we spend now for enforcement.

MR. COOPER: No.

MR. GLASER: Then, the answer to your question is an absolute no. We're collecting the income tax for \$5.5 million, which involves 3 million people.

MR. COOPER: We're not talking about that. We're talking about a situation where we had an experience.

MR. GLASER: \$30 million? No, it's a flat no.

MR. COOPER: All right, we're now talking about a situation where, up to '72, the sales tax was collected from the person who sold to the consumer, the retailer. Then, a change came about. Why the change?

MR. GLASER: Well, this was a plan, as I understand it, which was accomplished by the then administration.

MR. COOPER: Were you Tax Director at that time?

MR. GLASER: In '72? Yes I was.

MR. COOPER: Well, don't you know why there was a change? You lived with this. You had meetings in your office.

MR. GLASER: When it came to the final discussions, we were not present. We were there on some of the preliminaries. We indicated our opposition to the present method of taxing, as you say you did, and I have no reason to dispute that. We felt in the end that possibly we might be able to collect more at the retail level. As a matter of fact, in 1972, when this change was brought about, it's my recollection that the administration at that time needed additional revenue and they were going through revenue sources and they increased the corporation tax from 4½% to 5½%. They increased the cigarette tax from 14¢ to 19¢. They increased beverage tax from \$2.30 to \$2.80 in '72 and it may be that there might have been some concern on the part of the industry that they might have wanted to include the beverage tax at the drink, taxing it at that consumer expending it so it would reach the consumer level. I don't know.

MR. COOPER: I take exception, Mr. Director, to the fact that "possibly" is used and "may have been" and "might have been". Don't you have any specifics to give us on these things?

MR. GLASER: Specifics on what?

MR. COOPER: Facts.

MR. GLASER: On what?

MR. COOPER: Can't you say yes or no to something? We're not interested in what may have been or what might have been.

MR. GLASER: I thought I did. I thought I said that we were there at the time of the planning, that we indicated our opposition to the present method and you say you indicated your opposition to the present method, and after that, it was the administration that put forward the legislation in order to produce the current method of taxing and we were involved only in the revenue estimates as to what would happen and whether we could administer it, but the decision to do that was not ours. Doesn't that answer your question?

MR. COOPER: No. I think there's a responsibility that rested with the Director, just as you're coming here and telling us things about how you do things, to know what went on in '72 and I think you did know.

MR. GLASER: I think I told you that.

MR. COOPER: Well, you said possibly or may have been.

MR. O'KEEFE: Mr. Chairman, if I may interject, I think the witness has indicated that he came here not quite knowing what the agenda would be and has indicated here that least without the benefit of his files, reviewing them, he doesn't have a specific recollection with respect to '72. May I suggest to Mr. Cooper that he move on to some other area?

SENATOR BEDELL: I'm cognizant of that Dennis, but for the record, the Director and Mr. Cooper are good friends, and Mr. Cooper said to me beforehand, "I'm going to have to ask him some tough questions and get some answers," and I said, "Go ahead," because I know Sid and he's a pretty tough guy and can handle himself pretty well.

MR. COOPER: He does very well. They got us to pay the sales tax. I'm not picking on him personally.

MR. GLASER: You know, this is a very important industry to the State. The revenues that are produced are very substantial and we certainly wouldn't do anything that would injure or harm the industry, but I'm very clear in my recollection, and that's without referring to files, that we did not propose this present method of taxing and we did not advocate it.

MR. COOPER: When you say "we", who do you mean?

MR. GLASER: I mean the Division of Taxation.

MR. COOPER: How about the administration?

MR. GLASER: I said that was something else.

MR. COOPER: Did the administration propose this?

MR. GLASER: The administration with the cooperation of the then alcoholic beverage director proposed this method and that was it.

MR. COOPER: Do you know, as a matter of fact, whether the industry supported this?

MR. GLASER: I would think, yes. I think, in general, the industry did support it.

MR. COOPER: In what way? Who?

MR. GLASER: Well, in the legislation.

MR. COOPER: Well, when you say the industry, what segment or segments or was it the whole industry?

MR. GLASER: To me, it seemed that the industry as a whole supported it, but I think the information as to whether the industry supported it or not could best be obtained by asking the industry representatives.

MR. COOPER: Well, I was an industry representative at that time, including a meeting that was held in Trenton at the State House. It was attended by the then Attorney General and several other members of the administration. I don't recall you being there.

MR. GLASER: We weren't there. That's the point I'm making. We did not participate in the final decision.

MR. COOPER: That's where I learned, and what I'm trying to get over this morning and I'm trying to beat it out of you, if I can, if you know, that because the sales tax has brought forth so much less money than was anticipated under the then existing system that they had devised this new system to have the wholesalers collect the tax and add it on to the bill. It was opposed and opposed bitterly by our segment of the industry. What we've been doing is we've been banking the State for the collection of the sales tax. That's the one big objection. The other was that it was costing us an arm and a leg. We had to lay this money out and then, considering the default list and the people who did not pay the wholesalers--and when I say wholesalers, I mean the beer people as well as the whiskey people--and we never had any assurance of getting our money back and that has continued to the present time. So, we fought it bitterly, but we went ahead and we spent the extra money that involved getting larger computers. Smaller wholesalers were forced to buy computers, but we felt, quite frankly, that if this was cooperating, we wanted to cooperate, we would

cooperate because we were told pointblank that something has to be done. Now, if you leave it that way, fine, but now you want to go back to a system, and I can't understand why, to a system that never did work and because it didn't work and there was even a public hearing, which I attended and I think other people who are sitting here attended at the ABC Director's office--Mr. Leib attended for the Tax Director's office--at which time they explained the difficulty in collecting the money, that many retailers were not paying the money. I never heard any comment at all about a sales tax at a level, for instance, this legislative proposition #1, but I never hear of it in the past because at no time do I remember that there was any discussion of a sales tax on the drink and I think it's quite obvious why there couldn't be. That would really be tied up in the courts for quite a while. But now, all of a sudden, there's this overall story on the sales tax, as we're getting it from you that generally doesn't make any difference whether we have the minimum consumer resale price as the guide or the basis upon which to base the tax, that the collection of the tax, no matter what happens, isn't going to amount to much because you're such a large office and you can take care of so many items and details. Now, what is there about the conditions today, if you can answer it, what is there about the conditions today that are different from the conditions in '72 when the change was made, which would warrant this change?

MR. GLASER: First of all, Mr. Cooper, I didn't talk of any change that we were advocating. I merely indicated that these were options open to the Legislature. They could reject them all and not impose a sales tax at all on the sale of alcoholic beverages. This is up to the Legislature, but what I'm saying is that if anything goes wrong with the current minimum consumer resale price, which brings us \$55 million in sales tax, if the Legislature wants to provide a mechanism whereby that amount of revenue could be obtained, then these are some of the options that are available. That's all I'm saying.

MR. COOPER: That amount of revenue net?

MR. GLASER: As I said, the enforcement, of the entire sales tax, at the time it was operating--let me see if I can give you a number prior to our reorganization and if I get the sales tax revenue as of that time, I can give you a pretty good idea of what it cost us to administer the entire sales tax. In 1970, which is the year of the reorganization, we brought in \$355 million and at 1%, that would be \$3.5 million to administer the entire sales tax. I think it might have been even less than that.

MR. VANOLA: What year was that, Mr. Glaser?

MR. GLASER: That was 1970. That's probably what it cost at that time to administer the entire sales tax, not just the beverage licensees.

MR. COOPER: Well, you had to have some figures to come to that conclusion. What figures did you use? Did you have a figure in there for the cost of collecting the alcoholic beverage sales tax?

MR. GLASER: No. We never isolated a particular item because, why alcoholic beverage? Why not--

MR. COOPER: Well, have you done it since?

MR. GLASER: No.

MR. COOPER: Then, you really don't know what it would cost. When you say it wouldn't cost any more, that's just your speculation, your guess. You don't know from your figures--

MR. GLASER: Well, it probably would cost more because of inflation.

MR. COOPER: Oh, we're away from inflation.

MR. GLASER: Well, salaries are considerably higher. Everything doubled in the past ten years.

MR. COOPER: But, if you don't know what was spent in the way of salaries so far as alcohol beverage taxes are concerned, how can you say it's going to cost--

SENATOR BEDELL: I think we're getting pretty far afield here because I'm sure if Sid was abundantly prepared with the questions, he could come up with those answers.

MR. GLASER: Ordinarily, Mr. Cooper, salaries constitute about 80% of the agency's expenditures and if we were spending \$3.5 million on the entire sales tax, I would say about \$2.8 million was spent for salaries for the entire sales tax. Now, if you want to do some arithmetic and say that since we brought X dollars in alcoholic beverage and that constituted a certain percentage of that and then, presumably salaries went to that. But, getting back to that period of time, along the line of your questioning, it seems to me that the retailers were kind of put out by the sales tax at the retail level because they were being subjected to so many audits and to so many additional assessments and probably, they might have been very happy to have the tax imposed at the present level.

MR. COOPER: I'm sure they were, but you said "probably". Was there ever an official position taken by anyone in the industry to that effect, that you know of?

MR. VANOLA: I could answer that question. I'm a license C and we supported the plan completely.

MR. COOPER: Well, from our point of view, we did not and the beer people did not, the people at the wholesale level who would have to do the collecting. Let me ask you whether or not you feel, honestly, in your opinion, that the State, under this present plan, has had the benefit actually of the wholesaler banking the sales tax?

MR. GLASER: I would say so, sure.

MR. COOPER: Whether the wholesaler gets paid or not.

MR. GLASER: Because he's required to turn over that money.

MR. COOPER: Whether he gets paid or not, he still has to turn it over.

MR. GLASER: And that applies to any vender under the sales tax law. He turns over the money to us.

MR. COOPER: Wait a second. You say, any vender. I dispute that. Vender to whom? Vender to a consumer maybe, but a wholesaler is not a vender to a consumer.

MR. GLASER: You are in the same boat, so to speak, as a contractor who buys supplies for the construction of a building. This contractor, when he buys supplies, he pays sales tax to the supplier, who turns the money over to us even though it may be quite a time before he gets reimbursement through the sale of the house or whatever the construction is to the purchaser.

MR. COOPER: We're not complaining. We would like to see it continue.

SENATOR BEDELL: Can I interject for a moment? What I get from this, and I think it's what Mr. Cooper's driving at, if in 1972 we change the method of taxation because as you said the possibility of the abundance of audits, cumbersome system, and if that's so, what is different today to advocate going back to that system and scrapping the system that we have? Is there any reason that you know? I'm not asking for a qualitative judgement on your part as to the theory involved in it, but is there anything that you know, from the taxation point of view, that suddenly makes a system that was discredited some eight years ago now fashionable again? What has changed? Why is black now white?

MR. GLASER: Not necessarily. I indicated that there is no doubt in my mind that if we have to collect it at the retail level, it would entail additional auditing which we do not now have and probably additional expenditures.

MR. COOPER: Would you say, substantial additional auditing, because what you're auditing there means going in and looking over daily records and they're quite voluminous.

MR. GLASER: I think it would depend, Mr. Cooper. Look, I found out that in the administration of all the laws that we have that most of our taxes are self-assessing and I find that about 95% of the taxpayers and businesses are absolutely honest in the way that they report and it's always a small percentage that requires this intensive auditing and this intensive enforcement.

SENATOR BEDELL: Assemblyman Kern?

ASSEMBLYMAN KERN: Just in your experience, based not only on the sales tax, but other taxes, not necessarily taxes collected on alcoholic beverages, but have you found where you have a tax that involves a pass along factor, where the tax is ultimately passed along to the consumer, is there less likelihood of fraud or potential fraud in that type of a system than where there is no pass along factor?

MR. GLASER: Probably, because, as a matter of fact, one of the reasons why we have in our law that when a contractor purchases supplies, he would be the taxpayer, first of all, there's a lesser number of taxpayers to deal with. We don't have to deal with every homeowner who purchases a home in order to get a sales tax on the materials that go into the make-up of the home. We just go after the limited number of suppliers whether it's an electrical supplier or any kind of a supplier or a plumber and we get the tax right from them. So, the answer is yes, there is less likelihood and it's easier for us to check it out because here we're dealing with just one supplier.

MR. COOPER: Just one short question, if I may, through the Chairman, would you characterize the present situation, as far as the collection of alcoholic beverage taxes are concerned, specifically this alcoholic beverage sales tax, as giving you no difficulty as far as problems of enforcement are concerned?

MR. GLASER: I think that the problems that we have are minimal.

SENATOR BEDELL: Mr. O'Keefe?

MR. O'KEEFE: Thank you, Mr. Chairman. Mr. Director, just so I can clarify my notes, if I can go over what I understand to be four of the options that you have suggested to this Commission and therefore to the Legislature. First, again correct me if I'm wrong, you will administer whatever tax package in whatever form is directed by either the courts or the Legislature?

MR. GLASER: Certainly.

MR. O'KEEFE: The first option that you suggested is a sales tax at the consumer level, both on package goods and on the drink, is that correct?

MR. GLASER: Right.

MR. O'KEEFE: The second was a retail gross receipts tax of somewhere between 2.5 and 3.5%?

MR. GLASER: Right.

MR. O'KEEFE: The third was a tax on the wholesale price, the approximated markup and then it would be 6.25% to 6.75%?

MR. GLASER: Yes.

MR. O'KEEFE: The fourth would be an increase in the excise tax and I assume that would mean making alcoholic beverages exempt from the sales tax?

MR. GLASER: Right.

MR. O'KEEFE: Now, you mentioned earlier the present status of the retail level of the industry, roughly, 12,000 licensees, roughly, 3,000 of those are clubs which are not really in the package goods market.

MR. GLASER: I don't think I indicated any number.

MR. O'KEEFE: The thrust of my question is, do you have any idea at this point in time how many of those licensees might already be in your tax files?

MR. GLASER: I would think it would be a considerable number. Every corporation would be in our files and any retail licensee which sells taxable items would be in our sales tax file and any licensee which has tangible personal property used in business would be in our personal property file and we have a unified taxpayers file. So, actually, if the licensee is subject to any one of those taxes, he would be in our unified taxpayer file.

MR. O'KEEFE: My recollection is that prior to the amendment in 1972, and perhaps for some time thereafter, there was a procedure known as "greensheets" at the retail level of the industry. Are you familiar with that term?

MR. GLASER: Somewhat, yes. I think we abolished those.

MR. O'KEEFE: It dealt with the recording of inventory and purchases. If the end result was to be the fixing of tax at the retail level, would that system have to be reintroduced or would you suggest that it be reintroduced?

MR. GLASER: We would review that again, certainly, and if we could find a system that would give us the information needed that would be less burdensome, I'm sure we would adopt that.

MR. O'KEEFE: I have nothing further, Mr. Chairman.

SENATOR BEDELL: Mr. Vanola?

MR. VANOLA: Mr. Glaser, do you have any idea how much increase there was from the old system in 1971 or 1972, percentage of gross receipts from the old system, whatever the retailer used to pay and the system we have now in existence?

MR. GLASER: I don't have those numbers here. I would have to go back and get them.

MR. VANOLA: Could you furnish them to us, if possible, so we could have an idea?

MR. GLASER: Sure.

MR. VANOLA: As I stated before, Mr. Chairman, my group, the New Jersey Licensed Beer Association, did support the proposal to change the tax structure and here again, I remember the days when we had the cigar box that used to put the pennies in because 50% of our licensees did not have an up-to-date cash register and there was quite a saving on that alone. That's why we supported that.

Another question, in your fourth proposal, Mr. Glaser, increasing the excise tax--

MR. GLASER: Excuse me. I like to call them options.

MR. VANOLA: Whatever you wish. As you know, under the present system that we have now, just this month, the beginning of the month, some alcoholic beverages went up as high as \$8.00 per case. Naturally, the State of New Jersey, without doing anything, without changing the law, got at least 50¢ to 60¢ more per case, while the excise tax would be stationary.

MR. GLASER: Right.

MR. VANOLA: In other words, this system is good for the State of New Jersey because whenever there's an increase, there's an automatic increase in the sales tax.

MR. GLASER: Right.

MR. VANOLA: That's all

MR. GLASER: Mr. Chairman, I think when Mr. Shier gave me these figures, and they sound in the ballpark, the cost to the Division, in 1970, pre-administration, the change was 1% and the cost after the administrative change was .9%. The beverage cost, 1970, was 1.8% and the sales tax and the sales tax was 1%. Our 1970 report would show what the cost of administering each of the taxes were, as a percentage of the revenue collected and as I said before, it was always in the neighborhood of about 1% or a little less than 1%.

SENATOR BEDELL: 1% against the total revenues?

MR. GLASER: Yes, against revenues.

SENATOR BEDELL: And after the change it was .9%?

MR. GLASER: Yes.

SENATOR BEDELL: Then, we would be saying the difference between the overall cost would be about 8.5%

MR. GLASER: Yes. You see, personally, I always have a problem with trying to administer cost on the basis of revenue collected, because if you get a percentage increase and you do nothing else, all of a sudden, your costs are going to drop down. So, I'm always skeptical about it.

SENATOR BEDELL: So, they're only valid--

MR. GLASER: Only when you have a trend, when you do that on a trend, then you see the changes from year to year. Only then does it have validity.

SENATOR BEDELL: But, if they're the only figures that we have in evidence at the present time and using those and those alone with, naturally, the exceptions you mentioned, we are saying, in effect, that the change in the system back in--

MR. GLASER: This was a change in the entire system.

SENATOR BEDELL: But, that change does amount to about an 8.5% difference.

MR. GLASER: We became a more efficient operation because we utilized people more effectively.

SENATOR BEDELL: We know you have a very efficient department and it's getting better all the time.

MR. VANOLA: In 1972, the old system in 1972, the retailer used to pay.

MR. GLASER: In other words, you want to know what the difference in the sales tax collection is in those two years. I'll get that.

MR. COOPER: At the same time, could you give the total cost as far as alcohol beverage tax was concerned, the collection of the sales tax in 1970?

MR. GLASER: We could get that.

MR. COOPER: In other words, what I would like to know is some of the figures that would reflect what was being done in 1970, as long as we're using that as a base figure against which to compare something because if you didn't have any activity in 1970 as far as collecting these taxes was concerned, it wouldn't be a good, solid basis.

MR. GLASER: It ran fairly evenly, as I recall, over the years from the time the sales tax was initiated in 1966 right to '70; you'll find the percentages did not change very much. Should I send this information to the staff member?

SENATOR BEDELL: Yes, if you would. Any further questions of the Director? (No response) Mr. Glaser, thank you very much. We appreciate the fact that you weren't as prepared as you may have been if you were aware of the questions that were going to be asked, but under the circumstances, I think you handled yourself very well. Thank you. Mr. Joseph DeMarco?

J O S E P H D E M A R C O: I, first of all, thank the Commission to give me some time. My name is Joe DeMarco and I am the owner of Hygrade Beverages in the State of New Jersey and a member of the State Beer Distributors.

My whole ballywick in this whole matter of deregulation had to do with my experience in New York versus New Jersey, since I am a licensee in both states and obviously you heard from Senator Bernstein, I believe, at the last meeting from a so called legal point of view. My point of view, which I try to describe to everybody involved in deregulation at one hearing or another was the fact, in reality, although we're talking about an economic system, we're also trying to protect the consumer. In reality, what has occurred in the State of New York is just one of total devastation. In other words, what was created are some monsters that are not talked about or heard about when you refer to a non-regulated state. When you get away from some type of a consumerism or some type of a pricing, you get into a system where one of the chief problems that are now presently in the State of New York is that the actual consumer, let's say in my part of the business, which is the beer game, the actual consumer, although you see these ads and all this jazz which you may or may not see in New York and New Jersey papers, you'll find out that the average consumer is paying more for a case of beer in the State of New York than he is in the State of New Jersey. It is a fact that can be proven, which I've proven many times before, that the prices in the State of New York, at the wholesale level are higher than what they are in the State of New Jersey. In other words, as a beer wholesaler, I charge more for a case of beer in the State of New York than I do in the State of New Jersey. That's all under a deregulated system. The consumer, as well as the retailer, in 70 to 75% of the systems, are paying more for a case of beer than less under a deregulated system. In New York, you have a completely different marketing basis and that marketing basis is done through one of which is called the "home vender". They do approximately 35% of the total volume of the beer business in the State of New York. It changed to approximately 43%. The balance of the merchandising of beer is accomplished through on-premise licensees. A package store does not carry beer in the State of New York. I am saying that the home vender system and the chain system and what we refer very strongly to as the "Mom and Pop" system in New York is a lot different than in the State of New Jersey. But, I think, in reality, what you're concerned about is what does a consumer pay. In other words, when the time meets the price, the consumer pays higher. That's number one.

Number two, from another situation economically, referring to your present business relationship with the people that are now paying for your sales tax, you will find that you have an growing situation of peoples coming out of other States, such as New York, such as Pennsylvania and you get into something referred to as transshipment, which is something which is a non-entity in the State of New Jersey, but I can assure you that thirty seconds after deregulation in the State of New Jersey, you will have transshipment of the top A category because there are certain situations in New York that are not present in New Jersey that limit the transshipment in New York. There would not be this thing present in New Jersey, so it would be a wide open ballgame. And, you're talking about your sales tax. I have to believe that in our segment of the industry--I think Mr. Cooper was referring to the fact-- and I think the figures used in those years, was the fact that when they were brought in that from year to the next, if we're collecting \$60 million, of course inflation and the increase in volume and everything that goes with it, I would assume that the collection, at the time, was 50% less. We're now collecting 60 and under the old system, it would be 30. I can assure you, in the beer industry, if we account for,

presently, \$15 million to \$20 million of that sales tax. You would be lucky if you come up with \$20,000, based on the terms of transshipment. Now, to get into transshipment would take a lot of time, but I can assure you that that is a marketing policy, our problem, that is now associated in New York, as well as very flagrantly associated in the State of California. The State of California, you market in two segments. In New Jersey you have four segments, from a marketing standpoint. In the State of California, today, 60 days after deregulation, the one segment of the State never really was affected, the prices just continued to inflate. In the other segment, where they decreased with the liquor industry, they increased with the food industry. In a matter of 60 to 90 days, they reached their level and the liquor and beer just kept going higher and higher. So, there was no saving to the consumer. In essence, there was more cost. Now, I realize we're talking theory. I realize we're talking a lot of legal terms, which I'm not associated or familiar with. I realize we have a lot of reasons why we want to deregulate, economically. Call it whatever you want to call it. I am telling you, as a marketing expert in the field of beverage industries and in the distribution field throughout the country. In other words, I sell basically in the entire country in other businesses such as the computer field, which I'm also in. I can only tell you, under a deregulated basis, that the end loser is the consumer and it does affect what we now refer to as your present business people, those that are accounting for that \$60 million that you're now collecting and as a member of the entire industry and as a member of the beer industry, I can tell you very simply that if you want about 28 hours of facts, figures and situations in marketing in reference to being deregulated, I would be more than happy to give you the time.

SENATOR BEDELL: I appreciate your coming by and at one of the future meetings of the Committee we would very much like you to come back and explain in detail exactly about these marketing practices that you are familiar with.

MR. DEMARCO: It would be a pleasure to. Thank you very much for your time.

JACK MCCAFERTY: My name is Jack McCaferty from the United States Brewers Association. I just wanted to touch on one of the four options that Sid Glaser brought up here and to give you a brief background because apparently his memory has sort of mellowed since '72 and he came in here totally unprepared and I can understand that he forgot a few things. But, there was an omnibus tax bill being discussed back in '70 and '71. The State needed revenue and they came up with an omnibus tax bill. Everything was included in there including alcoholic beverages. When we came down and discussed the tax on alcoholic beverages, the main complaint from the Division of Taxation was the green sheets, which were measured, gentlemen, in tonnage. They were incredibly cumbersome and of course there was quite a bit of lapses on the part of, apparently, licensees, in reporting the sales tax. So, they desperately wanted to get rid of that and they offered me a trojan horse. They said, "We'll increase your excise tax and exempt you from the sales tax." Well, that, obviously, is just a short term proposition, in my opinion, and I'm surprised he raises that again today because if we are exempt under the new legislative set-up and we go to an increase in excise tax to raise this \$54.5 million, as sure as God made little green apples, in two or three years, we'd be back under the sales tax all over again. So, I would much prefer to be under a sales tax than I would under that number four option, which, number one, will recreate that whole mess that he forgot about, the difficulty, the lack of manpower, the difficulty in collection. I think Pete brought up an excellent point. If you get those figures, you will find that there must have been an appreciable increase in revenue when the wholesalers and brewers started to pay direct, instead

of at the retail level. So, that fourth option, in my opinion, brings back a whole mess prior to '72, Senator. Thank you.

MR. O'KEEFE: I would like to ask Mr. DiMarco a question.

SENATOR BEDELL: Certainly.

MR. O'KEEFE: When you pay the excise tax on beer and you also collect the sales tax from retailers, when do you have to turn it over to the State?

MR. DEMARCO: I'm glad you brought up that point. Going back to Jack's memory and Sid Glaser's memory, at all the hearings that Mr. Cooper referred to and all of the hearings that we had at the ABC, they were all part of it and part of this tremendous tax situation that they talked about. It was the fact that we would take over the sales tax which we pay monthly in and around the 20th, ten days prior to when we get our money in, and as a result, they were going to make up some fantastic arrangement where, since the excise was so cumbersome paying it by the 15th of every month, they would extend it a month. So, in essence, around February, I think, we gained 28 days of the excise tax, which is approximately, now, down to somewhere in the neighborhood of 12% of the sales tax, to give up seven to ten days in advance money on the sales tax. In other words, if an individual buys a piece of merchandise from a wholesaler March 1, we are not, by law, required to get that money prior to March 31 or April 1. Now, we are paying the sales tax by the 20th of the following month. So, what we are saying, very simply, is that within five to seven days we are banking the entire system. Now, the other deal, as far as the excise, we gained that 28 days, which was the first February, but once you have a gain of 28 days, now I still must perform an excise tax check once a month, the same month I did 26 years ago. So, in essence, I lost a day of my working capital to send to the State and the end result, at the end of 12 months, when that individual is still on default and I have prepaid your sales tax by eight days by the month, you're talking now, according to the size of your default, which you're talking a substantial amount of dollars that I have put out and then, the real nice, little killer, from a small businessman's point of view, which I referred to, is when that individual gets into some type of a situation where there is a death involved or something like that, where the license is, let's say, out in limbo and I just blow my money because I know Mr. Glaser is a fine, upstanding, tough individual and try to take the credit off that sonovagun. It isn't too easy, I'll tell you. So, we're banking the system and we're blowing our brains out, but in the meantime, in my way of looking at it, the real theory that we're concerned about is what or how can the State replace the \$55 million and can the retailer do it? My candid opinion is, I think once you're in the soup and you get out of the soup to correct it, why go back into the same soup and blow the money you're going to blow. There is no way you will ever collect, and I've had experience in the entire 50 states, the monies from the 12,000 licensees that you will from the simple computerized systems of the wholesalers which represent 150 in the State, that's beer and everything. It's a very simple system for Mr. Glaser and the entire Tax Division. If they're collecting \$60 million now, unless there's a tremendous system devised, they're going to blow a hell of a lot more than \$20 million of that money.

MR. O'KEEFE: Well, if I could follow up on that, essentially, what you're saying is, a little bit more latitude in the time period which the wholesale level of the industry would have to provide the funds to the State, should taxation continue to occur at that level, a little greater latitude would be greatly appreciated at the wholesale level of the industry.

MR. COOPER: May I answer that, because I lived through that? Legislation was prepared and agreement was made that if the wholesale level of the industry would collect the sales tax, there would be a 90 day base period. Today, it's a 60 day base period and the legislation was originally drawn that way. However, as it came out of the Legislature, it was a 60 day and not a 90 day. But, aside from all that, I think, basically, pointing to everything that Mr. McCaferty and Mr. DiMarco have said, as well as others in the past and in the future I'm sure, I would like this Commission to ask one simple question of the Tax Division, which it seems to me they can answer in no time at all. Namely, since 1972 and since the date that the wholesalers have been paying the sales tax to the State, has there been a single defaultation? In other words, has anybody defaulted in the payment of that tax?

MR. DEMARCO: I think the answer to that is, no.

MR. COOPER: I know the answer is no, but I would like to get it from the Tax Division.

SENATOR FORAN: We have one more quick question for you Sid. Has anybody ever defaulted since 1972 in the payment of the sales tax?

MR. O'KEEFE: He's talking about at the wholesale level.

MR. GLASER: Not to my recollection. They seem to be paying it pretty well.

SENATOR BEDELL: For the edification of the Commission, I'm attempting to speed up the transcript of these meetings so you do have a chance to go back and reflect on the testimony. I think at the prior meeting we had the gentleman from New York State and the gentleman from California. Their testimony was very relevant to what we're concerned with and I, for one, want to go back and reread it, aside from my notes and my own recollection. I think it has been your experience too that many times the transcripts come out after the bills are on the floor or after the legislation has been framed. So, we're getting some cooperation and we're going to speed up those transcripts so you'll be getting the transcript of the last meeting very, very shortly and this one will follow suit right away.

MR. COOPER: I would like to request a short executive meeting.

MR. O'KEEFE: I second the motion.

SENATOR BEDELL: All right, the public portion of this meeting is now closed.

(Hearing Concluded)

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